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Chief Deputy Director

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February 14, 2012

TO: Supervisor Zev Yaroslavsky, Chairman  
Supervisor Gloria Molina  
Supervisor Mark Ridley-Thomas  
Supervisor Don Knabe  
Supervisor Michael D. Antonovich

FROM: Mitchell H. Katz, M.D.  
Director

SUBJECT: **NOTIFICATION OF DEPARTMENT OF HEALTH SERVICES'  
INTENT TO USE DELEGATED AUTHORITY TO EXECUTE  
COMMUNITY HEALTH PLAN TRANSITION AND SAFETY NET  
SUPPORT AGREEMENT WITH L.A. CARE HEALTH PLAN**

On November 15, 2011, your Board approved delegated authority to the Director of Health Services or his designee, to execute an agreement with L.A. Care Health Plan (L.A. Care) to structure the long-term financial relationship between L.A. Care and the County and to provide for the orderly transfer of health plan operations from CHP to L.A. Care, effective on date of Board approval through December 31, 2021, subject to review and approval by County Counsel and prior notification to your Board and the Chief Executive Office (CEO).

This is to advise your Board that the Department of Health Services (DHS) will be exercising this authority to execute a Community Health Plan Transition and Safety Net Support Agreement, effective January 1, 2012, consistent with the financial terms detailed in my confidential memorandum of November 3, 2011. A copy of the Agreement is attached for your Board's reference. Pursuant to the DHS Board letter dated November 8, 2011 (approved November 15, 2011, attached), the financial provisions are considered confidential and have been redacted from the attached agreement.

The Department will be executing this Agreement no earlier than 12:00 noon on February 21, 2012.

A separate confidential memorandum will be provided to your Board concerning the financial terms.

The key (non-financial) terms of the Agreement are summarized below:

1. Transfer of Obligation to Perform Health Plan Functions: L.A. Care assumed the obligation to perform the health plan functions performed by CHP effective January 1, 2012, for Medi-Cal Managed Care, and effective February 1, 2012, for the In Home Supportive Services Program (IHSS).

Note: The CHP Healthy Families Program (HFP) health plan functions will cease upon expiration of CHP's state HFP contract on September 30, 2012. The HFP members assigned to CHP will be able to choose another health plan as part of the State's open enrollment process at that time.

2. Mutual Indemnification: Each party has agreed to indemnify, defend and hold harmless the other party for any of the indemnifying party's acts and omissions.
3. Term: Except as set forth below, the term of the agreement is for a ten (10) year period to expire on December 31, 2021, with automatic successive one year renewal periods thereafter unless either party serves one year prior notice to terminate the agreement for convenience. Either party can terminate the agreement upon the other party's material breach of a material term of the Agreement that remains uncured after a reasonable cure period.

In addition changes to the financial terms of the Agreement may be made during the ten (10) year term under the following conditions, but only as agreed to by the parties:

- a. If there are significant changes to the rates or operational provisions for Medi-Cal or IHSS, or to the material terms upon which either of the parties relied underlying this Agreement, the parties have agreed to negotiate in good faith.
- b. After five (5) years, the parties agree to negotiate in good faith any changes at the request of either party.

It should be noted that any such changes must be consistent with the guiding principle that L.A. Care is not to realize any "net profit" or "net margin" on members assigned to DHS as the provider.

County Counsel has reviewed and approved the agreement as to form.

If you have any questions or need additional information, please contact me or your staff may contact John Schunhoff, Ph.D., Chief Deputy Director of Health Services, at (213) 240-8370.

MHK:JFS:jp

Attachment

- c: Chief Executive Office  
County Counsel  
Executive Office, Board of Supervisors

**COMMUNITY HEALTH PLAN  
TRANSITION AND SAFETY NET SUPPORT AGREEMENT**

**\* \* \* \* \***

**LOCAL INITIATIVE HEALTH AUTHORITY FOR  
LOS ANGELES COUNTY  
D.B.A. L.A. CARE HEALTH PLAN**

**And**

**COUNTY OF LOS ANGELES, DEPARTMENT OF HEALTH SERVICES**



## **HEALTH PLAN TRANSITION AND SAFETY NET SUPPORT AGREEMENT**

THIS COMMUNITY HEALTH PLAN TRANSITION AND SAFETY NET SUPPORT AGREEMENT ("Agreement") is made and entered into as of **January 1, 2012** (the "Effective Date"), by and between **County of Los Angeles ("County")**, **Department of Health Services ("DHS")**, on the one hand, and the **Local Initiative Health Authority for Los Angeles County d.b.a. L.A. Care Health Plan ("Healthplan")**, on the other hand, with reference to the following facts.

A. The County, through DHS, owns and operates a health care service plan licensed in the State of California under the Knox-Keene Health Care Service Plan Act of 1975, as amended, dba Community Health Plan ("CHP"), through which DHS arranges for the provision of health care services to individuals in Southern California who are eligible for benefits under the California Medi-Cal Program ("MCP") and In-Home Supportive Services Program ("IHSSP") (collectively, the "CHP Business").

B. Healthplan is a prepaid comprehensive health care service plan, licensed to conduct such business in the County of Los Angeles, California, under the Knox-Keene Health Care Services Plan Act of 1975, as amended ("Act")

C. Healthplan provides health services to Members (as such term is defined in this Agreement) of the Healthplan through contracting with other health plans, hospitals, physicians, and other health care providers.

D. Healthplan and County desire to transition the CHP Business from County to Healthplan (the "Transaction"), on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing recitals, and the representations, warranties and covenants herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows.

### ***1. TRANSFER OF CHP BUSINESS***

#### ***1.1 Transfer of Assets and Liabilities.***

At the Closing (as defined in Section 10.1), for the consideration hereinafter provided and in reliance upon the representations and warranties of the parties set forth herein, County shall transfer and assign to Healthplan, and Healthplan shall obtain all right, title and interest of County in and to the CHP Business:

(a) Subject to all necessary approvals and the provisions hereof, the member agreements or other agreements of County pursuant to which County has the right to provide health care services to individuals ("Members") enrolled in the CHP Business (the "Membership Agreements"); and

(b) Subject to reasonable access by County, all available original, or true and correct copies, of all documents, proprietary materials, information, media, books, records, forms, files, methods and processes related to, and reasonably necessary for, the administration of the CHP Business, and all rights to use the same to the extent transferable to Healthplan, including, without limitation, the following items: (i) all CHP Records (as defined in Section 10.3) that are maintained by DHS in the ordinary course of business with respect to the CHP Business; (ii) all financial information regarding Members and providers applicable to the Transferred Assets; (iii) Member lists; (iv) all clinical and policy and procedure manuals, and promotional, marketing and recruiting materials; (v) all available material, documents, information and correspondence relating to the Assumed Obligations (as defined in Section 3.1), including, without limitation, the originals of all of the Assumed Contracts (as defined in Section 3.1); and (iv) evidences of coverage and/or disclosure documents, combined or otherwise, used in connection with the membership agreements and all other written materials provided to Members enrolled under the membership agreements; provided, however, the foregoing is subject in all respects to any and all applicable confidentiality restrictions and limitations regarding the disclosure and/or dissemination of such information.

(c) County shall only be responsible for every liability of every kind or nature, known or unknown, costs and obligations arising from or related to the CHP Business for periods prior to the respective Closing Dates for MCP and IHSSP. Healthplan shall only be responsible for every liability of every kind or nature, know or unknown, costs and obligations arising from or related to the CHP Business for periods after the respective Closing Dates for MCP and IHSSP.

## **2. ONGOING SAFETY NET SUPPORT**

## **3. ASSUMPTION OF LIABILITIES, OBLIGATIONS AND COSTS OF COUNTY AND HEALTHPLAN**

### **3.1 Liabilities, Obligations and Costs Assumed by Healthplan.**

Healthplan shall be responsible for and assume, effective as of the Closing, and shall pay, discharge and perform as and when due, only each of the following liabilities, obligations and costs (the "Assumed Obligations"): all costs, obligations and liabilities that arise after the Closing Date with respect to the CHP Business (whether known or unknown, express or implied, fixed or contingent, liquidated or unliquidated, due or to become due), and necessary permits and accreditation.

### **3.2 Obligation Not assumed by Healthplan.**

Except for the Assumed Obligations, Healthplan shall not assume or become obligated with respect to any other obligation or liability of County of any nature whatsoever (whether express or implied, fixed or contingent, liquidated or unliquidated, known or unknown, due or to become due) (the "Excluded Liabilities"), including, without limiting the generality of the foregoing:



(a) Obligations or liabilities of County now existing or which may hereafter exist by reason of, or in connection with, any alleged negligence, or willful misconduct on the part of County on or prior to the Closing; and

(b) Obligations or liabilities of County now existing or which may hereafter exist by reason of any liability to refund any payment or reimbursement received by County from any payor which is attributable to any period of time ending on or prior to the Closing (including, but not limited to, any liability to DHCS, PASC or any other payor seeking, by reason of the transfer of the CHP Business by County to Healthplan hereunder, to recapture any costs reimbursed or reimbursable to County) or any fines, assessments, penalties, judgments, awards, charges with respect to the MCP or IHSS, and the like which is attributable to any period of time ending on or prior to the Closing.

#### **4. REPRESENTATIONS AND WARRANTIES OF COUNTY**

County represents and warrants to Healthplan as follows:

##### **4.1 Organization of County.**

County, through DHS has full power to carry on its business as presently conducted and as will be conducted through the Closing, and to own or lease and operate its properties and assets now owned or leased and operated by it, and is authorized to exercise its powers, rights and privileges.

##### **4.2 Title to CHP Business.**

(a) Subject to (i) obtaining necessary approvals and consents as more particularly described in this Agreement, County has and shall deliver to Healthplan at Closing (i) title, and (ii) rights, interest, documents, data and information, in accordance with the intent of this Agreement, which are necessary for Healthplan to conduct the CHP Business and as requested by Healthplan.

(b) To the knowledge of County, there are no purchase contracts, options or other agreements of any kind whereby any person or entity will have acquired or will have any basis to assert any right, title or interest in, or right to the possession, use, enjoyment or proceeds of any part or all of the CHP Business.

##### **4.3 Governmental Consents.**

Except as otherwise disclosed in Sections 8.4 and 9.3, no consent, approval, authorization or order of, and no exemption by or filing with, any court or governmental agency (non-County) is required on behalf of County in connection with (a) the transfer of the CHP Business to Healthplan or (b) the execution and delivery of this Agreement or any related agreement necessary to effectuate the terms of this Agreement, or the consummation and fulfillment by

County of the transactions contemplated hereby, or the performance by County of its obligations hereunder.

## **5. OBLIGATIONS AND COVENANTS OF COUNTY**

County covenants and agrees as follows:

### **5.1 Conduct of Business.**

Subsequent to the Effective Date, County agrees that, with respect to the CHP Business, unless Healthplan otherwise consents in writing, which consent shall not be unreasonably withheld, conditioned or delayed, County shall do or comply with each of the following:

- (a) Subject to the limitations set forth in this Section 5.1, and regulatory requirements and procedures, operate the CHP Business in a prudent manner;
- (b) Maintain the books and records of the CHP Business in a manner consistent with past business practices; and
- (c) During the period between the Effective Date and the Closing Date, County will continue to administer its provider and other agreements. The parties agree that County shall have a right, title and interest to all cash, checks, funds of any nature, receipts, collections, capitation payments and other moneys and revenue due to County related to dates of service provided by the County through and until the Closing Date.

Nothing in this Section 5.1 shall, without the mutual written agreement of Healthplan and County, obligate County to make expenditures other than in the ordinary course of business.

### **5.2 Access and Information.**

County shall provide such written consents and authorizations as may be necessary for Healthplan to have access to materials on file with governmental agencies. Nothing in this Agreement to the contrary shall in any manner restrict the ability of Healthplan to discuss the business and affairs of the CHP Business with any governmental agency having jurisdiction over the CHP Business and/or this transaction or the fiscal intermediaries administering the CHP Business' payor programs; provided, however, that: (a) Healthplan shall not initiate discussions with the California Department of Managed Health Care ("DMHC"), unless such discussions are incident, or in any way relate, to Healthplan's health plan license, Attorney General or any Assistant Attorney General of the State of California (the "Attorney General"), the California Department of Health Care Services ("DHCS"), unless such discussions are in Healthplan's sole discretion necessary with respect to Healthplan's agreement with DHCS, without first giving County notice that Healthplan intends to enter into such discussions, and giving County an opportunity to participate in such discussions. County's covenants under this Section 5.2 are made with the understanding that Healthplan and any other person provided with access to information under this Section shall use all such information in compliance with all laws and



regulations. Notwithstanding anything to the contrary provided herein, neither Healthplan nor any other person shall have access to employee records, Member records or any other records to the extent that the disclosure of such records would be prohibited by any law, or rule or agreement (express or implied) of confidentiality. However, Healthplan shall have access to all books, contracts, accounts, paper, records and communications with regulatory authorities to the extent the foregoing is necessary, in the reasonable determination of Healthplan, to conduct the CHP Business in accordance with the express terms of this Agreement.

### 5.3 Consent of Others.

As soon as reasonably practicable after the Effective Date, and in any event prior to or as soon as possible after the Closing, County shall use its commercially reasonable efforts to seek the consents required to be obtained hereunder from governmental agencies having jurisdiction over this transaction, to the consummation of the transaction contemplated hereunder; including, without limitation, those approvals referenced in Section 8.4, provided, however, that this provision shall not preclude the responsibility of Healthplan to use its commercially reasonable efforts to seek any consents required in connection with the approvals referenced in Section 8.4.

### 5.4 County's Efforts to Close.

County shall use its commercially reasonable efforts to satisfy all the conditions precedent set forth in Section 9 under this Agreement to the extent that County's action or inaction can control or influence the satisfaction of such conditions.

### 5.5 Representations and Warranties True on the Closing.

All representations and warranties of County and Healthplan set forth in this Agreement will also be true and correct in all material respects as of the Closing as if made on that date unless they are stated as of a specific date; provided, however, that those representations and warranties of County and Healthplan that are qualified by materiality shall be true and correct in full accordance with their terms as of the Closing as if made on that date unless they are stated as of a specific date.

## 6. ***REPRESENTATIONS AND WARRANTIES OF HEALTHPLAN***

Healthplan represents and warrants as follows:

### 6.1 Organization and Good Standing.

Healthplan is an independent public entity and is authorized to exercise its powers, rights and privileges, and carry on its business as presently conducted and to own or lease and operate its properties and assets now owned or leased and operated by it.



## 6.2 Authority.

Upon approval or ratification by its Board of Governors, Healthplan has the full power and the authority to execute, deliver and perform the obligations and covenants set forth in this Agreement necessary to effectuate the terms of this Agreement to which it is a party and to carry out the transactions contemplated hereby and thereby. This Agreement is valid and binding upon and enforceable against Healthplan in accordance with its terms. To the best of Healthplan's knowledge, the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby or thereby will not: (a) violate any law applicable to Healthplan or (b) violate or conflict with any provision of the Bylaws of Healthplan.

## 6.3 Healthplan Acknowledgement of Disclosures of County.

County has advised Healthplan and Healthplan acknowledges that DMHC has alleged that County is not in compliance with various requirements arising under the Knox-Keene Health Care Service Plan Act and the regulations promulgated thereunder and that County may not be in compliance with other laws affecting the CHP Business

## 7. ***OBLIGATIONS AND COVENANTS OF HEALTHPLAN***

Healthplan hereby covenants and agrees as follows:

### 7.1 Healthplan's Efforts to Close.

Healthplan shall use its commercially reasonable efforts to satisfy all the conditions precedent set forth in Section 8 to its or County's obligations under this Agreement to the extent that Healthplan's action or inaction can control or influence the satisfaction of such conditions.

### 7.2 Third Party Reimbursements/Recoveries.

(a) Except as provided in this Agreement, Healthplan shall be responsible for liabilities with respect to the CHP Business which arise after the Closing Date in accordance with Section 3.1.

(b) Healthplan shall promptly pay over to County all cash receipts, if any, received by Healthplan with respect to any accounts receivable of County, which arise prior to the Closing Date.

### 7.3 Healthplan's Permits.

As soon as reasonably practicable after the date hereof, and in any event prior to the Closing Date, Healthplan shall use its commercially reasonable efforts to seek to obtain all permits and accreditations required for the operation of the lines of business identified on Exhibit 1 by County following the Closing Date in substantially the same manner as currently operated.

#### 7.4 Consent of Others.

As soon as reasonably practicable after the Effective Date, and in any event prior to or as soon as possible after the Closing Date, Healthplan shall use its commercially reasonable efforts to seek the consents required to be obtained hereunder from governmental agencies having jurisdiction over this transaction, to the consummation of the transaction contemplated hereunder; including, without limitation, those approvals referenced in Section 8.4, provided, however, that this provision shall not preclude the responsibility of County to use its commercially reasonable efforts to seek any consents required in connection with the approvals referenced in Section 8.4.

### 8. ***CONDITIONS PRECEDENT TO OBLIGATIONS OF HEALTHPLAN***

The obligations of Healthplan under this Agreement are subject to the satisfaction or Healthplan's waiver in writing, prior to or as soon as possible after the Closing Date, of each of the following conditions; provided, however, that if Healthplan proceeds to close the transaction contemplated by this Agreement, Healthplan shall thereafter, without further action, be deemed to have waived any such condition not previously satisfied or waived upon the Closing Date.

#### 8.1 Accuracy of Warranties and Representations.

Each representation and warranty of County set forth in this Agreement shall be true and correct in all material respects as of the Closing Date with the same force and effect as though such representation and warranty had been made as of the Closing Date, except as to changes occurring in the ordinary course of business of County after the Effective Date without violating any covenant of County herein and not resulting in a material adverse change as to County.

#### 8.2 Performance of Obligations.

County shall have performed substantially all agreements and covenants required by this Agreement to be performed by it on, prior to, or as soon as possible after the Closing Date.

#### 8.3 Instruments of Transfer.

At the Closing Date, County shall have delivered to Healthplan, as the case may be, such documents with respect to the CHP Business as has been reasonably requested by Healthplan.

#### 8.4 Approvals.

DMHC shall have approved the transaction contemplated in this Agreement with respect to all lines of business. DHCS shall have approved the transaction contemplated in this Agreement as it relates to MCP.



## **9. CONDITIONS PRECEDENT TO OBLIGATIONS OF COUNTY**

The obligations of County under this Agreement are subject to the satisfaction or County's waiver in writing, at or prior to or as soon possible after the Closing Date, of each of the following conditions; provided, however, that if County proceeds to close the transaction contemplated by this Agreement, County shall thereafter, without further action, be deemed to have waived any such condition not previously satisfied or waived upon the Closing Date.

### **9.1 Accuracy of Warranties and Representations.**

Each representation and warranty of Healthplan set forth in this Agreement shall be true and correct in all material respects as of the Closing Date with the same force and effect as though such representation and warranty had been made as of the Closing Date, except as to changes occurring in the ordinary course of business of Healthplan after the Effective Date without violating any covenant of Healthplan herein and not materially affecting the business or financial condition of Healthplan.

### **9.2 Performance of Obligations.**

Healthplan shall have performed all agreements and covenants required by this Agreement to be performed by it on , prior to or as soon as possible after the Closing Date.

### **9.3. Approvals.**

DMHC shall have approved the Transaction with respect to the CHP Business. DHCS shall have approved the Transaction as it relates to MCP.

## **10. PLAN PARTNER SERVICES AGREEMENT**

County and Healthplan, hereby, acknowledge that CHP and Healthplan are each a party to that certain Services Agreement, effective date January 1, 2010, as amended, ("Services Agreement") wherein CHP provides and arranges for the provision of health care services as a subcontractor of Healthplan. In that regard, County and Healthplan expressly agree to terminate the Services Agreement effective as of the Closing Date; provided that those terms and conditions of the Services Agreement which expressly survive the termination of the Services Agreement shall be incorporated herein and made a part of this Agreement; namely, Section 3.10 (Plan Grievance/Appeal Procedure), Section 6.01 (Capitation Payments), subsections i and ii of section b, which shall be effective by amendment of this Agreement, Section 6.03 (Collection of Charges from Members); Section 9.01 (Maintenance of Records); Section 9.02 (Right to Inspect); Section 10.03 (Confidential Requirements); Section 10.07 (Dispute Resolution); Section 10.23 (Representations and Warranties of County); Exhibit 6, as amended, Paragraphs F,G,H and I of section I and section II (Second Addendum to Exhibit 6 Managed Care Supplemental Payments); Health Plan/Provider Agreement Amendment, and Exhibit 8, Sections 2.1, 2.2, 2.4, 2.5, 2.6, 2.7, 2.9 and 2.11 (Business Associate Health Information Disclosure).

#### 10.1 Closing.

Both parties shall use their commercially reasonable efforts to close on or before January 1, 2012, for the transfer of the MCP and on or before February 1, 2012, for the transfer of IHSSP from the County to Healthplan. For purposes of this Agreement "Closing" or "Closing Dates" shall mean the dates which the MCP and/or IHSSP as the case may be are transitioned to Healthplan.

#### 10.2 Deliveries at Closing. On or before or as soon as possible after the Closing Dates:

(a) County shall deliver to Healthplan the appropriate (as per line of business) instruments of transfer and assignment as necessary, to effectuate the Transaction; and

(b) Healthplan shall deliver to County the appropriate (as per line of business) agreements, certificates, documents and instruments as necessary to effectuate the Transaction.

#### 10.3 Preservation of and Access to Records.

Owner of CHP Records. The term "CHP Records" shall mean all records created and/or maintained in connection with the CHP Business for periods ending on or prior to the Closing Dates, including without limitation all records, documents and other materials which are not confidential nor subject to the attorney-client privilege. Upon the Closing Date, County shall be deemed to have assigned and transferred to Healthplan, or if necessary waived and released solely in favor of Healthplan, all of the CHP Records and any and all privileges with respect thereto, and County shall be deemed to have consented to Healthplan's access thereto. Notwithstanding the foregoing, the parties shall cooperate in providing copies and access to the CHP Records as set forth below, subject to continuing compliance with the provisions of the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations promulgated thereunder ("HIPAA"), including but not limited to, the Standards for Privacy of Covered Individually Identifiable Health Information, 45 Code of Federal Regulations Parts 160 and 164, and the HITECH Act (Title XIII of the American Recovery and Reinvestment Act of 2009 ("ARRA")), also known as the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act, including, but not limited to, Title 45, Sections 164.314(a)(2)(i), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CFR.") and Sections 13401(a) and 13404 of ARRA).

(a) Document Retention. Healthplan shall retain the CHP Records at such other location in as Healthplan, in its sole discretion, shall determine from time to time, at Healthplan's cost, as may be required by contract, law or regulation.

(b) County Access. As of the Closing Dates, to the extent permitted by law, Healthplan hereby grants, and County shall have, access to the appropriate (as per line of business) CHP Records as needed for any lawful purpose, including, without limitation: (i) filing or contesting audits or settlements; and (ii) defending any third party claim. Any CHP Records delivered to or made available to County and its representatives pursuant to this or any other



provision of this Agreement, (1) shall be returned to Healthplan when County's use therefore has terminated; and (2) shall not be used by County or its representatives in any unlawful manner or in violation of any express or implied rule or agreement of confidentiality. Healthplan shall instruct its appropriate employees to cooperate in providing access to such records to County and its authorized representatives as contemplated herein. Access to such records shall be, wherever reasonably possible, during normal business hours, with reasonable prior written notice to Healthplan of the time when such access shall be needed. County's employees, representatives and agents shall conduct themselves in such a manner so that Healthplan's normal business activities shall not be unduly or unnecessarily disrupted.

(c) **Destruction Notice and Destruction.** After the expiration of the applicable document retention period, to the extent permitted by law, County shall have the right, at its own expense, to request Healthplan to deliver any such records to County and Healthplan shall thereupon deliver the same to County. Healthplan shall be solely responsible for ensuring the proper destruction of any CHP Records not requested by County, and Healthplan shall be solely responsible for any liability resulting from the improper destruction thereof. County shall be solely responsible for ensuring the proper destruction of any CHP Records delivered to County, and County shall be solely responsible for any liability resulting from: (i) any breach of confidentiality or privilege arising from any disclosure thereof; or (ii) any subsequent destruction thereof.

#### 10.4. Litigation Cooperation.

After the Closing Dates, upon prior reasonable written request, each party shall cooperate with the other, at the requesting party's expense (but including only out-of-pocket expenses to third parties and not the costs incurred by any party for the wages or other benefits paid to its officers, directors or employees), in furnishing information, testimony and other assistance in connection with any actions, tax audits, proceedings, arrangements or disputes involving either of the parties hereto (other than in connection with disputes between the parties hereto) and based upon contracts, arrangements or acts of County which were in effect or occurred on or prior to the Closing and which related to the CHP Business, including, without limitation, arranging discussions with, and the calling as witnesses of officers, directors, employees, agents and representatives of Healthplan.

#### 10.5 Audits and Contests.

After the Closing and for the period of time necessary to conclude any pending or potential audit, administrative or judicial appeal or contest of any reports for Medicare, Medi-Cal or any other payor, with respect to the CHP Business concerning periods ending on or before the Closing Dates, Healthplan shall within fifteen (15) business days of Healthplan's receipt of the same, forward to County all appropriate (as per line of business) information received from payors relating to periods prior to and as of the Closing Dates, including, without limitation, report settlements, notices of program reimbursements, demand letters for payment, proposed audit adjustments and any other related correspondence. Upon the reasonable request of County,



to the extent feasible, Healthplan shall assist County in obtaining information deemed by County to be necessary or convenient in connection with any audit, any administrative or judicial appeal, or any contest of such reports. Healthplan's services hereunder shall be purely ministerial in nature and under no circumstances shall Healthplan perform any services which will cause Healthplan to become an agent or other fiduciary of County with respect to such audits or contests. If Healthplan believes, in its reasonable judgment, that such services provided hereunder will cause it to become such an agent or fiduciary, Healthplan may terminate such services; provided however, that such termination of Healthplan's services shall not terminate nor in any way alter nor interfere with County's right to access CHP Records consistent with the terms of this Agreement in connection with such audit, appeal or contest. County hereby releases and discharges Healthplan from all liability in connection with such audits, administrative or judicial appeals and contests.

#### 10.6 Filing Reports; Amounts Due To or From Third Party Payors.

(a) County and Healthplan shall prepare and timely file all reports and all other filings which are required to be filed with DHCS and any other payors or any governmental agency with respect to the operations of the CHP Business for any and all periods ending on or prior to the Closing Dates. Such reports and filings shall be available to the other party upon request. County shall retain all rights to any amounts receivable, including, without limitation, amounts receivable from (and County shall remain obligated for all amounts due to) Medicare, Medi-Cal, or such other payors with respect to such filed reports or filings (as reflected thereon or as finally determined by the audit, administrative or judicial appeal, contest or other adjustment of such reports or filings) and the parties hereby acknowledge and agree that Healthplan is not hereby being assigned or assuming any of the same. Healthplan shall promptly notify County of such amounts due to Medicare, Medi-Cal or other payors from County or any amounts due from Medicare, Medi-Cal, or other payors to Healthplan which are being withheld by Medicare, Medi-Cal, or such other payors by reason of County's breach of its obligations under this Section or by reason of any other event or occurrence taking place or otherwise attributable to the operations of the CHP Business on or prior to the Closing Date. On receipt of such notice, together with written evidence from Medicare, Medi-Cal, or such other payors in support thereof, if any exist in Healthplan's possession, County shall remit all such amounts or comply with its obligations hereunder within sufficient time to avoid the imposition of any interest charges or the withholding of any payment due from Medicare, Medi-Cal, or other payors to Healthplan; provided, however, that if any such withholding has occurred, for whatever reason, County shall reimburse Healthplan for the full amount of all payments so withheld within three business days of Healthplan's written notice to County of the same. County's rights shall include, without limitation, the right to dispute or to appeal any determinations relating to such reports.

#### 10.7 Indemnification.

Each party shall indemnify, defend and hold harmless the other party, its Special Districts, elected and appointed officers, employees, and agents from and against any and all



liability including but not limited to demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from or connected with the indemnifying parties' acts and/or omissions arising from or related to this Agreement.

In addition, such indemnification, defense and holding harmless (of Healthplan) by the County as described in this Section 10.7 shall extend to such liability arising on or before the Closing Date as a result of the CHP Business. Such indemnification, defense and holding harmless (of County) by the Healthplan as described in this Section 10.7 shall extend to such liability arising after the Closing Date as a result of the CHP Business.

## ***11. TERM, TERMINATION, RENEGOTIATION AND ADDITIONAL INDEMNIFICATION***

11.1 (a) The term of this Agreement shall be from the period beginning as of the Effective Date, to and through December 31, 2021, and shall renew automatically for successive one (1) year periods thereafter, except that either party may terminate this Agreement for convenience effective December 31, 2021, or at any other end of the subsequent calendar year upon twelve (12) months prior written notice thereto.

(b) If at any time during the term of this Agreement a significant change is made by the U.S. Federal government or the State of California to the financing or operational provisions of the IHSSP or the MCP, or any of the assumptions upon which either of the parties relied upon in negotiating the terms and conditions of this Agreement are materially altered, either party may request a renegotiation of the specific terms and conditions under section 2 of this Agreement, which may be applicable to any program referenced therein. Upon such request, the parties shall meet and confer in good faith to renegotiate such provisions. Any changes to such financial provisions, as mutually agreed to by the parties, shall be incorporated into this Agreement by way of an amendment duly executed by the parties.

(c) In addition to the foregoing, after a period of five (5) years following the Effective Date of this Agreement, either party may request to renegotiate any part of the financial provisions under Section 2 of this Agreement. Upon such request, the parties shall meet and confer and agree to negotiate in good faith. Any changes to such financial provisions, as mutually agreed to by the parties, shall be incorporated into this Agreement by way of an amendment duly executed by the parties.

(d) The parties understand and acknowledge that any such renegotiated terms and conditions to Section 2 of this Agreement as referenced in this Section 11 shall comply with the guiding principle that Healthplan shall not realize any "net margin" or net profit" in relation to members assigned to the County as a provider. As such, Healthplan shall calculate the rates included in the Healthplan/County provider agreements with the guiding principle that Healthplan shall only receive reimbursement for actual administrative expenses, but not to exceed six percent (6%) except with respect to IHSSP, incurred by Healthplan regarding any particular program.

(e) If during the initial term of this Agreement (through December 31, 2021), the parties fail to reach mutual agreement on revised financial provisions, the financial provisions in Section 2 of this Agreement (except Section 2.1 (d) after additional compensation is completed) shall remain in full force and effect.

(f) In addition to the foregoing, this Agreement may be terminated by either party with ninety (90) days prior written notice upon a material breach of any of the material terms and conditions of this Agreement by the other party, and after such time the breaching party has been given notice, an opportunity to cure, and failed to cure, such breach.

(g) In the event of termination of this Agreement, the provisions specified in Sections 10 and 11 shall survive the Agreement termination.

(h) In addition those indemnification provisions contained in Section 10 of this Agreement through incorporation by reference of those indemnification terms and conditions of Section 8.02 of the Services Agreement, each party agrees to indemnify the other party and its respective agents, employees, officers, directors, successors, assigns, affiliates, subsidiaries or related parties and hold them harmless from and against all liens or claims, liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees) incurred or suffered by any of them arising out of any of the following:

(i) any breach of any representation, warranty or covenant of either party contained in this Agreement; and

(ii) any lien, claim suit, action or proceeding now or hereafter pending or threatened by any third party against either party arising out of actual or alleged acts or omissions of either party in connection with the transaction contemplated herein, and which actions or inactions of the indemnifying party took place prior to or after the Closing Date.

## **12. GENERAL PROVISIONS**

### **12.1 Notices.**

All notices, requests, demands, waivers, consents and other communications hereunder shall be in writing, shall be delivered either in person, by telegraphic, facsimile or other electronic means, by overnight air courier or by mail, and shall be deemed to have been duly given and to have become effective: (a) upon receipt if delivered in person or by telegraphic, facsimile or other electronic means calculated to arrive on any business day prior to 6:00 p.m. local time at the address of the addressee, or on the next succeeding business day if delivered on a non-business day or after 6:00 p.m. local time; (b) one business day after having been delivered to an air courier for overnight delivery; or (c) three business days after having been deposited in the mails as certified or registered mail, return receipt requested, all fees prepaid, directed to the



parties or their assignees at the following addresses (or at such other address as shall be given in writing by a party hereto).

If to Healthplan, addressed to:

*L.A. Care Health Plan  
1055 West 7<sup>th</sup> Street  
Los Angeles, California 90017  
Attn: Chief Executive Officer*

*L.A. Care Health Plan  
1055 West 7<sup>th</sup> Street  
Los Angeles, California 90017  
Attn: General Counsel*

If to County, addressed to:

*Los Angeles County Department of Health Services  
313 North Figueroa Street  
Los Angeles, California 90012  
Attn: Director and Chief Medical Officer*

with a simultaneous copy to:

*Los Angeles County Department of Health Services  
313 North Figueroa Street  
Los Angeles, California 90012  
Attn: County Counsel, County of Los Angeles  
500 West Temple Street, Room 602  
Los Angeles, California 90012*

## 12.2 Form of Instruments.

Any document to be delivered hereunder shall be in form and substance, and shall be executed and delivered in a manner, reasonably satisfactory to the recipient thereof and consistent with the provisions of this Agreement.

## 12.3 Remedies Not Exclusive.

Except as otherwise expressly set forth in this Agreement, no remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The

election of any one or more remedies by a party shall not, except as otherwise expressly provided for herein, constitute a waiver of the right to pursue other available remedies.

#### 12.4 Successors and Assigns; No Third Party Rights.

The rights under this Agreement shall not be assignable nor the duties delegable by any party without the written consent of the other and nothing contained in this Agreement, express or implied, is intended to confer upon any person or entity, other than the parties hereto and their permitted successors-in-interest and permitted assignees, any rights or remedies under or by reason of this Agreement unless so stated to the contrary.

#### 12.5 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

#### 12.6 Captions and Paragraph Headings.

Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be used in construing it.

#### 12.7 Entirety of Agreement; Amendments.

This Agreement (including the Exhibits hereto) and other documents and instruments specifically provided for in this Agreement contain the entire understanding between the parties concerning the subject matter of this Agreement and such other documents and instruments and, except as expressly provided for herein, supersede all prior understandings and agreements, whether oral or written, between them with respect to the subject matter hereof and thereof. There are no representations, warranties, agreements, arrangements or understandings, oral or written, between the parties hereto relating to the subject matter of this Agreement and such other documents and instruments which are not fully expressed herein or therein. This Agreement may be amended or modified only by an agreement in writing signed by all of the parties hereto.

#### 12.8 Construction.

This Agreement and any documents or instruments delivered pursuant hereto, shall be construed without regard to the identity of the party which drafted the various provisions of the same. Each and every provision of this Agreement and such other documents and instruments shall be construed as though the parties participated equally in the drafting of the same. Consequently, the parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement or such other documents and instruments.



#### 12.9 Waiver.

Except as specifically stated herein, the failure of any party to insist, in any one or more instances, on performance of any of the terms, covenants and conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or thereunder or of the future performance of any such term, covenant or condition, but the obligations of the parties with respect thereto shall continue in full force and effect. Except as specifically stated herein, no waiver of any provision or condition of this Agreement by any party shall be valid unless in writing and signed by such party or operational by the terms of this Agreement. A waiver by one party of the performance of any covenant, condition, representation or warranty of the other party shall not invalidate this Agreement, nor shall such waiver be construed as a waiver of any other covenant, condition, representation or warranty. A waiver by any party of the time for performing any act shall not constitute a waiver of the time for performing any other act or the time for performing an identical act required to be performed at a later time.

#### 12.10 Severability and Renegotiation.

The provisions of this Agreement are severable, and if any one or more provisions may be determined to be judicially unenforceable, in whole or in part, the remaining provisions and any partially unenforceable provisions, to the extent enforceable, shall nevertheless be binding upon and enforceable against the parties hereto. To the extent any one or more provisions of Section 2 of this Agreement are determined to be invalid, void or otherwise judicially unenforceable by a regulatory agency, court of competent jurisdiction or entity or party, the parties shall renegotiate any such provision(s) in an attempt to maintain the spirit of this Agreement. To the extent any of the provisions set forth in Section 2 are determined to be invalid, void or otherwise judicially unenforceable, the parties shall renegotiate such provisions consistent with the intent of the parties as described in this Agreement. For example, the specific amount set forth in Section 2.1 is calculated to account for the revenue received by MCP Members assigned to CHP who were not assigned to DHS providers. Such type of calculation may be negotiated by the parties in lieu of any offending provisions in Section 2.

#### 12.11 Consents Not Unreasonably Withheld.

Wherever the consent or approval of any party is required under this Agreement, such consent or approval shall not be unreasonably withheld, delayed or conditioned, unless such consent or approval is expressly stated to be at the sole and absolute discretion of such party.

#### 12.12 Time of Performance.

In the event that any action or performance shall be due hereunder on a Saturday, Sunday or any legal holiday for banks in the jurisdiction in which such action or performance is due or where the party required to provide the same is located, the time for such performance shall automatically be extended until the end of the next business day.

12.13 Governing Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of California as applied between residents of that state entering into contracts to be performed wholly within the State of California.

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement on the date first above written.

**THE LOCAL INIATIVE HEALTH  
AUTHORITY FOR LOS ANGELES  
COUNTY dba L.A. CARE HEALTH  
PLAN ("Healthplan")**

By: \_\_\_\_\_  
Name: Howard A. Kahn  
Title: Chief Executive Officer  
  
Date: \_\_\_\_\_

**COUNTY OF LOS ANGELES,  
DEPARTMENT OF HEALTH SERVICES  
("County")**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
Date: \_\_\_\_\_